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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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10 Donald Cory Dehar,) No. CV 11-1735-PHX-RCB (MHB)
11 Plaintiff,) **ORDER**
12 vs.)
13 Warden Diaz, et al.,)
14 Defendants.)
15

16 Plaintiff Donald Cory Dehar, who is confined in the Arizona State Prison Complex,
17 Barchey Unit, in Buckeye, Arizona, has filed a *pro se* civil rights Complaint pursuant to 42
18 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. (Doc. 1, 2.) Plaintiff has
19 also filed a motion for emergency relief, which the Court construes as a motion for injunctive
20 relief. (Doc. 5.) The Court will dismiss the Complaint with leave to amend and deny the
21 motion.

22 **I. Application to Proceed *In Forma Pauperis* and Filing Fee**

23 Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.
24 § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).
25 The Court will assess an initial partial filing fee of \$25.38. The remainder of the fee will be
26 collected monthly in payments of 20% of the previous month's income each time the amount
27 in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate
28 Order requiring the appropriate government agency to collect and forward the fees according

1 to the statutory formula.

2 **II. Statutory Screening of Prisoner Complaints**

3 The Court is required to screen complaints brought by prisoners seeking relief against
4 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
5 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
6 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
7 be granted, or that seek monetary relief from a defendant who is immune from such relief.
8 28 U.S.C. § 1915A(b)(1), (2).

9 A pleading must contain a “short and plain statement of the claim *showing* that the
10 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not
11 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
12 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
13 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
14 statements, do not suffice.” Id.

15 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
16 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
17 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
18 that allows the court to draw the reasonable inference that the defendant is liable for the
19 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
20 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
21 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
22 allegations may be consistent with a constitutional claim, a court must assess whether there
23 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

24 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
25 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th
26 Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards
27 than formal pleadings drafted by lawyers.’” Id. (quoting Erickson v. Pardus, 551 U.S. 89,
28 94 (2007) (*per curiam*)).

1 If the Court determines that a pleading could be cured by the allegation of other facts,
2 a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the
3 action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The Court
4 should not, however, advise the litigant how to cure the defects. This type of advice “would
5 undermine district judges’ role as impartial decisionmakers.” Pliler v. Ford, 542 U.S. 225,
6 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether the court was
7 required to inform a litigant of deficiencies). The Court will dismiss Plaintiff’s Complaint
8 for failure to state a claim, but because the Complaint may possibly be saved by amendment,
9 the Court will grant Plaintiff leave to amend.

10 **III. Complaint**

11 Plaintiff alleges three claims for threat to safety, denial of constitutionally adequate
12 medical care, and retaliation. Plaintiff sues Arizona Governor Janice Brewer and the
13 following employees of the Arizona Department of Corrections (ADC): Director Charles
14 Ryan; Warden Diaz; and Deputy Warden Perkins. Plaintiff seeks injunctive, compensatory,
15 and punitive relief.

16 Plaintiff alleges the following facts: On April 18, 2011, he was subject to controlled
17 movement for a visit to the dentist when another inmate struck him in the head with a
18 padlock tied to a torn sheet. Plaintiff was also kicked multiple times in the face, neck, head,
19 and back. No officers were supervising Plaintiff’s controlled movement at the time, contrary
20 to prison policy. Plaintiff suffered a concussion and severe head and neck injuries, which
21 have continued since that time. According to Plaintiff, the assault was captured on videotape
22 and shows that no officers were present.

23 Plaintiff further alleges retaliation for seeking medical care after he was attacked as
24 follows: his property was seized and later lost, money in his inmate account was removed,
25 his out-going mail was held temporarily, he was denied out-going calls, and his inmate
26 request forms to seek replacement of his property were ignored. In addition, “some guards”
27 told other inmates that Plaintiff was gay, although he is not.

28 / / /

IV. Failure to State a Claim

Section 1983 provides a cause of action against persons acting under color of state law who have violated rights guaranteed by the United States Constitution and federal law. 42 U.S.C. § 1983; see also Buckley v. City of Redding, 66 F.3d 188, 190 (9th Cir. 1995). To state a claim under § 1983, a plaintiff must allege facts supporting that (1) the conduct about which he complains was committed by a person acting under the color of state law and (2) the conduct deprived him of a federal constitutional or statutory right. Wood v. Ostrander, 879 F.2d 583, 587 (9th Cir. 1989). A “plaintiff generally must assert his own legal rights and interests, and cannot assert the legal rights or interests of third parties.” Mothershed v. Justices of the Supreme Court, 410 F.3d 602, 610 (9th Cir. 2005) (quoting Warth v. Seldin, 422 U.S. 490, 499 (1975)). A plaintiff must also allege that he suffered a specific injury as a result of the conduct of a particular defendant and he must allege an affirmative link between the injury and the conduct of that defendant. Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976).

Further, to state a claim against a defendant, a “plaintiff must allege facts, not simply conclusions, that show that an individual was personally involved in the deprivation of his civil rights.” Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998). For an individual to be liable in his official capacity, a plaintiff must allege that the official acted as a result of a policy, practice, or custom or that the official promulgated a policy, practice or custom resulting in the violation. See Cortez v. County of Los Angeles, 294 F.3d 1186, 1188 (9th Cir. 2001). In addition, there is no *respondeat superior* liability under § 1983, so a defendant’s position as the supervisor of someone who allegedly violated a plaintiff’s constitutional rights does not make him liable. Monell v. Dep’t of Soc.Servs., 436 U.S. 658, 691 (1978); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). A supervisor in his individual capacity, “is only liable for constitutional violations of his subordinates if the supervisor participated in or directed the violations, or knew of the violations and failed to act to prevent them.” Taylor, 880 F.2d at 1045. Moreover, where a defendant’s only involvement in allegedly unconstitutional conduct is the denial of administrative grievances,

1 the failure to intervene on a prisoner's behalf to remedy the alleged unconstitutional behavior
2 does not amount to active unconstitutional behavior for purposes of § 1983. Shehee v.
3 Luttrell, 199 F.3d 295, 300 (6th Cir. 1999); accord Mintun v. Blades, No. CV-06-139-BLW,
4 2008 WL 711636, at *7 (D. Idaho Mar. 14, 2008); Stocker v. Warden, No. 1:07-CV-
5 00589LJODLBP, 2009 WL 981323, at *10 (E.D. Cal. Apr. 13, 2009).

6 **A. Brewer, Ryan, and Perkins**

7 Plaintiff sues Arizona Governor Brewer, Director Ryan and DW Perkins. Plaintiff
8 alleges that Ryan was to blame for the absence of officers to escort him when he was
9 attacked. Plaintiff only alleges that Perkins was the Deputy Warden of Stiner Unit and he
10 includes no factual allegations against Brewer.

11 Plaintiff alleges no facts against Perkins or Brewer, and thus, fails to state a claim
12 against either. Plaintiff predicates his claim against each Ryan on *respondent superior*. As
13 noted above, *respondeat superior* does not afford a basis for liability under § 1983. Because
14 Plaintiff fails to state a viable constitutional claim against Perkins, Brewer, or Ryan, they will
15 be dismissed.

16 **B. Threat to Safety**

17 Plaintiff designates Count I as a claim for threat to safety or failure to protect. To
18 state a claim under § 1983 for failure to protect or threats to safety, an inmate must allege
19 facts to support that he was incarcerated under conditions posing a substantial risk of harm
20 and that prison officials were “deliberately indifferent” to those risks. Farmer v. Brennan,
21 511 U.S. 825, 832-33 (1994). To adequately allege deliberate indifference, a plaintiff must
22 allege facts to support that a defendant knew of, but disregarded, an excessive risk to inmate
23 safety. Id. at 837. That is, “the official must both [have been] aware of facts from which the
24 inference could be drawn that a substantial risk of serious harm exist[ed], and he must also
25 [have] draw[n] the inference.” Id.

26 Plaintiff has not alleged facts to support that any Defendant knew or had reason to
27 know that the attacking inmate posed a threat to Plaintiff. Plaintiff also does not allege facts
28 to support that he was incarcerated under conditions posing a substantial risk of harm to him.

1 For example, Plaintiff does not allege that any Defendant knew that the inmate who attacked
2 Plaintiff had threatened him previous to the attack. Mere failure to comply with prison
3 procedures, absent more, does not rise to the level of a constitutional violation. Accordingly,
4 Plaintiff fails to state a claim for threat to safety or failure to protect and Count I will be
5 dismissed.

6 **C. Medical Care**

7 Plaintiff designates Count II as a claim for denial of constitutionally adequate medical
8 care. Not every claim by a prisoner relating to inadequate medical treatment states a
9 violation of the Eighth or Fourteenth Amendment. To state a § 1983 medical claim, a
10 plaintiff must show that the defendants acted with “deliberate indifference to serious medical
11 needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429
12 U.S. 97, 104 (1976)). A plaintiff must show (1) a “serious medical need” by demonstrating
13 that failure to treat the condition could result in further significant injury or the unnecessary
14 and wanton infliction of pain and (2) the defendant’s response was deliberately indifferent.
15 Jett, 439 F.3d at 1096 (quotations omitted).

16 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051,
17 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both know
18 of and disregard an excessive risk to inmate health; “the official must both be aware of facts
19 from which the inference could be drawn that a substantial risk of serious harm exists, and
20 he must also draw the inference.” Farmer, 511 U.S. at 837. Deliberate indifference in the
21 medical context may be shown by a purposeful act or failure to respond to a prisoner’s pain
22 or possible medical need and harm caused by the indifference. Jett, 439 F.3d at 1096.
23 Deliberate indifference may also be shown when a prison official intentionally denies,
24 delays, or interferes with medical treatment or by the way prison doctors respond to the
25 prisoner’s medical needs. Estelle, 429 U.S. at 104-05; Jett, 439 F.3d at 1096.

26 Deliberate indifference is a higher standard than negligence or lack of ordinary due
27 care for the prisoner’s safety. Farmer, 511 U.S. at 835. “Neither negligence nor gross
28 negligence will constitute deliberate indifference.” Clement v. California Dep’t of

1 Corrections, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); see also Broughton v. Cutter
2 Labs., 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of “indifference,” “negligence,” or
3 “medical malpractice” do not support a claim under § 1983). “A difference of opinion does
4 not amount to deliberate indifference to [a plaintiff’s] serious medical needs.” Sanchez v.
5 Vild, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care, without more, is
6 insufficient to state a claim against prison officials for deliberate indifference. See Shapley
7 v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985). The indifference
8 must be substantial. The action must rise to a level of “unnecessary and wanton infliction
9 of pain.” Estelle, 429 U.S. at 105.

10 In Count II, Plaintiff alleges that after the assault, he was taken to a concealed area by
11 prison staff where he lay unconscious for several hours rather than being taken to the hospital
12 as provided in prison policies. Plaintiff fails to connect these allegations to any named
13 Defendant. For that reason, he fails to state a claim in Count II and it will be dismissed.

14 **D. Retaliation**

15 Plaintiff designates Count III as a claim for retaliation. To state a constitutional claim
16 for retaliation, a plaintiff must allege that a defendant acting under color of state law took
17 adverse action against him because he engaged in protected conduct, the adverse action was
18 not narrowly tailored to advance legitimate goals, and the adverse action chilled the
19 plaintiff’s exercise of his First Amendment rights or caused him to suffer more than minimal
20 harm. Rhodes v. Robinson, 408 F.3d 559, 567-58 (9th Cir. 2005); see also Hines v. Gomez,
21 108 F.3d 265, 267 (9th Cir. 1997) (retaliation claims requires an inmate must show (1) that
22 the prison official acted in retaliation for the exercise of a constitutionally-protected right,
23 and (2) that the action “advanced no legitimate penological interest”).

24 Plaintiff asserts that unidentified guards took adverse action against him after he
25 sought medical care following the attack. While Plaintiff alleges that adverse action was
26 taken against him for engaging in protected conduct, he fails to connect the adverse acts to
27 any Defendant. Plaintiff also fails to specify when the acts occurred, the property lost, or the
28 amount removed from his inmate trust account. For these reasons, Plaintiff fails to state a

1 claim in Count III.

2 **V. Leave to Amend**

3 For the foregoing reasons, Plaintiff's Complaint will be dismissed for failure to state
4 a claim upon which relief may be granted. Within 30 days, Plaintiff may submit a first
5 amended complaint to cure the deficiencies outlined above. The Clerk of Court will mail
6 Plaintiff a court-approved form to use for filing a first amended complaint. If Plaintiff fails
7 to use the court-approved form, the Court may strike the amended complaint and dismiss this
8 action without further notice to Plaintiff.

9 Plaintiff must clearly designate on the face of the document that it is the "First
10 Amended Complaint." The first amended complaint must be retyped or rewritten in its
11 entirety on the court-approved form and may not incorporate any part of the original
12 Complaint by reference. Plaintiff may include only one claim per count.

13 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963
14 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
15 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as
16 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original
17 complaint is waived if it is not raised in a first amended complaint. King v. Atiyeh, 814 F.2d
18 565, 567 (9th Cir. 1987).

19 **VI. Motion for Injunctive Relief**

20 As noted above, Plaintiff has filed a motion for injunctive relief. (Doc. 5.) To obtain
21 injunctive relief, the moving party must show "that he is likely to succeed on the merits, that
22 he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance
23 of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural
24 Res. Def. Council, Inc., 555 U.S. 7, 22 (2008); Am. Trucking Assoc., Inc. v. City of Los
25 Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009). The moving party has the burden of proof on
26 each element of the test. Environmental Council of Sacramento v. Slater, 184 F. Supp. 2d
27 1016, 1027 (E.D. Cal. 2000). In addition, the "serious questions" version of the sliding scale
28 test for preliminary injunctions remains viable after the Supreme Court's decision in Winter.

1 Alliance for the Wild Rockies v. Cottrell, 632 F. 3d 1127, 1134-35 (9th Cir. 2011). Under
2 that test, a preliminary injunction is appropriate when a plaintiff demonstrates that “serious
3 questions going to the merits were raised and the balance of hardships tips sharply in
4 [plaintiff’s] favor.” Id. (citing Lands Council v. McNair, 537 F.3d 981, 987 (9th Cir. 2008)
5 (en banc)). That approach requires that the elements of the preliminary injunction test be
6 balanced, so that a stronger showing of one element may offset a weaker showing of another.
7 “For example, a stronger showing of irreparable harm to plaintiff might offset a lesser
8 showing of likelihood of success on the merits.” Alliance for the Wild Rockies, 632 F.3d at
9 1135. A plaintiff must also satisfy the other Winter factors, including the likelihood of
10 irreparable harm. Id. Further, “[n]o preliminary injunction shall be issued without notice to
11 the adverse party.” Fed.R.Civ. P. 65(a)(1). In addition, a temporary restraining order
12 without notice may be granted *only* if the applicant certifies to the court in writing the efforts,
13 if any, that he made to give notice and the reasons that notice should not be required.
14 Fed.R.Civ.P. 65(b).

15 In his motion, Plaintiff states that fellow employees of the Defendants have tampered
16 with his out-going mail by copying it and providing it to non-employees. He alleges “they”
17 have also used “others” to impede contact with family, the U.S. Attorney’s Office, the
18 Federal Bureau of Investigations, and have threatened Plaintiff’s life “simply for exercising
19 his guaranteed First Amendment . . . to ask the Government for re-dress of grievance.” (Doc.
20 5 at 2.) Plaintiff seeks an order to Defendants and their fellow employees to stop threatening
21 Plaintiff and send his outgoing mail to the U.S. Attorney’s Office and the FBI. Plaintiff’s
22 motion does not reflect service on the Defendants nor does he certify in writing the efforts
23 he made to give notice to the Defendant or reasons why such notice should not be required.
24 Moreover, Plaintiff makes only conclusory assertions against non-Defendants. Plaintiff’s
25 motion will be denied.

26 **VII. Warnings**

27 **A. Release**

28 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his release.

1 Also, within 30 days of his release, he must either (1) notify the Court that he intends to pay
2 the balance or (2) show good cause, in writing, why he cannot. Failure to comply may result
3 in dismissal of this action.

4 **B. Address Changes**

5 Plaintiff must file and serve a notice of a change of address in accordance with Rule
6 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
7 relief with a notice of change of address. Failure to comply may result in dismissal of this
8 action.

9 **C. Copies**

10 Plaintiff must submit an additional copy of every filing for use by the Court. See
11 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice
12 to Plaintiff.

13 **D. Possible “Strike”**

14 Because the Complaint has been dismissed for failure to state a claim, if Plaintiff fails
15 to file an amended complaint correcting the deficiencies identified in this Order, the
16 dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g).
17 Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil
18 judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior
19 occasions, while incarcerated or detained in any facility, brought an action or appeal in a
20 court of the United States that was dismissed on the grounds that it is frivolous, malicious,
21 or fails to state a claim upon which relief may be granted, unless the prisoner is under
22 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

23 **E. Possible Dismissal**

24 If Plaintiff fails to timely comply with every provision of this Order, including these
25 warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at
26 1260-61 (a district court may dismiss an action for failure to comply with any order of the
27 Court).

28 / / /

1 **IT IS ORDERED:**

2 (1) Plaintiff's Application to Proceed *In Forma Pauperis* is **granted**. (Doc. 2.)

3 (2) As required by the accompanying Order to the appropriate government agency,
4 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$25.38.


5 (3) The Complaint is **dismissed** for failure to state a claim. (Doc. 1.) Plaintiff has
6 **30 days** from the date this Order is filed to file a first amended complaint in compliance with
7 this Order.

8 (4) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of
9 Court must, without further notice, enter a judgment of dismissal of this action with prejudice
10 that states that the dismissal may count as a "strike" under 28 U.S.C. § 1915(g).

11 (5) The Clerk of Court must mail Plaintiff a court-approved form for filing a civil
12 rights complaint by a prisoner.

13 (6) Plaintiff's motion for injunctive relief is **denied**. (Doc. 5.)

14 DATED this 16th day of October, 2011.

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18 Robert C. Broomfield
19 Senior United States District Judge
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**Instructions for a Prisoner Filing a Civil Rights Complaint
in the United States District Court for the District of Arizona**

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. The Filing Fee. The filing fee for this action is \$350.00. If you are unable to immediately pay the filing fee, you may request leave to proceed *in forma pauperis*. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court *In Forma Pauperis* Pursuant to 28 U.S.C. § 1915” for additional instructions.
5. Original and Judge’s Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten.
6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$350 filing fee or the application to proceed *in forma pauperis* to:**

Phoenix & Prescott Divisions:
U.S. District Court Clerk
U.S. Courthouse, Suite 130
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

OR

Tucson Division:
U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. Certificate of Service. You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed *in forma pauperis*). Each original document (except the initial complaint and application to proceed *in forma pauperis*) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. See Fed. R. Civ. P. 5(a), (d). Any document received by the Court that does not include a certificate of service may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this _____ (month, day, year) to:

Name: _____

Address: _____

Attorney for Defendant(s)

(Signature)

9. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court before any defendant has answered your original complaint. See Fed. R. Civ. P. 15(a). After any defendant has filed an answer, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. Exhibits. You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

HEADING:

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “Bivens v. Six Unknown Federal Narcotics Agents” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**

2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked “Other,” you must identify the specific issue involved.

3. Supporting Facts. After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.

4. Injury. State precisely how you were injured by the alleged violation of your rights.

5. Administrative Remedies. You must exhaust any available administrative remedies before you file a civil rights complaint. See 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

_____ (Full Name of Plaintiff))	
Plaintiff,)	
)	
vs.)	CASE NO. _____
)	(To be supplied by the Clerk)
(1) _____ (Full Name of Defendant))	
(2) _____)	
(3) _____)	
(4) _____)	
Defendant(s).)	
<input type="checkbox"/> Check if there are additional Defendants and attach page 1-A listing them.)	

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

☐ Original Complaint
☐ First Amended Complaint
☐ Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:
- ☐ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983
 - ☐ 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).
 - ☐ Other: _____
2. Institution/city where violation occurred: _____

B. DEFENDANTS

1. Name of first Defendant: _____. The first Defendant is employed as:
_____ at _____.
(Position and Title) (Institution)
2. Name of second Defendant: _____. The second Defendant is employed as:
_____ at _____.
(Position and Title) (Institution)
3. Name of third Defendant: _____. The third Defendant is employed as:
_____ at _____.
(Position and Title) (Institution)
4. Name of fourth Defendant: _____. The fourth Defendant is employed as:
_____ at _____.
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☐ No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

D. CAUSE OF ACTION

COUNT I

1. State the constitutional or other federal civil right that was violated: _____

2. **Count I.** Identify the issue involved. Check **only one**. State additional issues in separate counts.
- | | | | |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count I. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

- ## 5. Administrative Remedies:

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
- b. Did you submit a request for administrative relief on Count I? ☐ Yes ☐ No
- c. Did you appeal your request for relief on Count I to the highest level? ☐ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

COUNT II

1. State the constitutional or other federal civil right that was violated: _____

2. **Count II.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

□ Basic necessities

☐ Mail

☐ Access to the court

☐ Medical care

☐ Disciplinary proceedings

□ Property

☐ Exercise of religion

□ Retaliation

☐ Excessive force by an officer

- Threat to safety

☐ Other:

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count II. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on its right side, suggesting it's resting on a surface.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

- ## 5. Administrative Remedies.

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No

- b. Did you submit a request for administrative relief on Count II? ☐ Yes ☐ No

- c. Did you appeal your request for relief on Count II to the highest level? ☐ Yes ☐ No

- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

COUNT III

1. State the constitutional or other federal civil right that was violated: _____.
-
2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.
☐ Basic necessities ☐ Mail ☐ Access to the court ☐ Medical care
☐ Disciplinary proceedings ☐ Property ☐ Exercise of religion ☐ Retaliation
☐ Excessive force by an officer ☐ Threat to safety ☐ Other: _____.
3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.
- _____

_____.
4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).
- _____

_____.
5. **Administrative Remedies.**
- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
- b. Did you submit a request for administrative relief on Count III? ☐ Yes ☐ No
- c. Did you appeal your request for relief on Count III to the highest level? ☐ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

E. REQUEST FOR RELIEF

State the relief you are seeking:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
DATE

SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or
other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.